

0112B

BEFORE THE POLLUTION CONTROL HEARINGS BOARD
STATE OF WASHINGTON

P. J. SENATORE, JR.,

Appellant,

v.

NORTHWEST AIR POLLUTION
AUTHORITY,

Respondent.

PCHB No. 90-116

FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER

This matter came on for hearing before the Pollution Control Hearings Board at Mt. Vernon, on Thursday, January 24, 1991, Member Harold S. Zimmerman, presiding, with Member Annette McGee.

The matter is an appeal from Notice of Penalty of \$500 from Notice of Violation No. 1716 issued June 4, 1990, relating to burning prohibited materials and asbestos removal.

Appellant Pat Joseph Senatore, Jr., represented himself. Respondent Northwest Air Pollution Authority (NWAPA) was represented by William Nielsen, attorney at law. The proceedings were recorded by Lettie Hylarides of Evergreen Court Reporting, Everett, Washington.

Witnesses were sworn and testified. Exhibits were admitted and examined. From the testimony heard and exhibits examined, the Pollution Control Hearings Board makes the following

FINAL FINDINGS OF FACT,
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2 FINDINGS OF FACT

3 I

4 P. J. Senatore Jr., owns the property at 1715 Martin Road, Mt.
5 Vernon, Washington, which is the subject of this appeal. The City of
6 Mt. Vernon Building permit noted that the number posted on the house
7 is 1749 Martin Road.

8 II

9 NWAPA has the authority to carry out a program of air pollution
10 prevention and control in a geographic area which includes Mt. Vernon
11 and Skagit, Island and Whatcom counties. Copies of NWAPA's
12 regulations have been filed with this Board, and the Board takes
13 official notice of those regulations.

14 III

15 On January 5, 1990, Mr. Senatore applied for and received permit
16 No. 6722 to demolish an existing residence at 1715 Martin Road (1749
17 Martin Road). This involved getting approval from the city engineer's
18 office, the planning director, the fire marshal, and the building
19 official, who noted that the approval was with certain conditions,
20 including demolition requirements of the City of Mt. Vernon. These
21 conditions stated that the "contractor plans to burn the debris at the
22 site after obtaining proper permits or will haul the debris away from
23 the site to be burned at a location outside the city limits."

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2 IV

3 When applying for a burning permit, Mr. Senatore learned from
4 Fire Department Station 2 that he needed to get approval from NWAPA
5 for proper procedure for asbestos removal.

6 V

7 ON January 8, 1990, David Blake, air inspector II, talked to Mr.
8 Senatore about the asbestos compliance program, explaining NWAPA's
9 regulations, including notification. He agreed to meet with Senatore
10 to visit the house to recommend procedures. As owner of the property
11 and building to be demolished, Mr. Senatore said he would take care of
12 the asbestos removal.

13 VI

14 Mr. Senatore did take samples of material and had tests made on
15 four pieces at the asbestos laboratory in Mt. Vernon. Two items
16 tested with 10% asbestos. Two other items were considered
17 non-asbestos.

18 VII

19 Demolition work continued on the building and Mr. Senatore
20 arranged with Lloyd Dave Bye to remove material from the site, and on
21 May 5, 1990, Mr. Senatore paid \$152.04 for landfill fees from the
22 dumping of materials from the site at \$45 a ton. On May 11, 1990, he
23 paid \$121.63 in dump fees for materials that Lloyd Dave Bye moved from
24 the site.

VIII

NWAPA inspector Dave Blake went to the demolition site on May 10, 1990, and took 12 photos of the materials being burned: rolled charred vinyl, charred floor tile, plastic, wood, were in the burn pit, as well as, several pieces of asbestos, including asbestos backing on the sub-floor.

IX

Notice of Violation No. 1716 was issued on May 16, 1990. It cited Mr. Senatore for allegedly allowing unlawful outdoor burning of prohibited materials, vinyl tile, tar paper, plastic, and asbestos-backed rolled vinyl on his property on Martin Way (Section 501.22, NWAPA Regulations). The citation also listed "failure to notify NWAPA of asbestos removal (Section 507.3), failure to remove asbestos from facility prior to demolition (Section 570.61), failure to adequately wet asbestos containing material stripped from facility to ensure its remaining wet until collected and disposed (Section 570.622C1), and failure to seal all asbestos-containing materials in leak-tight containers while wet, (Section 570.823)."

X

On May 17, 1990, Mr. Senatore, agitated about the notice of violation, went to the NWAPA office and said he felt he had followed proper procedures in disposing of the asbestos; he purchased a respiration device for \$40; he paid for four sample tests at the Mt.

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2 Vernon Asbestos laboratory; he put samples in 6-mil bags, taped them
3 with duct tape and indicatd he had done what he had been told to do.
4 While there, he prepared a written statement to NWAPA. It was dated
5 5/17/90, regarding the house at College Way and Martin Road. It
6 listed four subjects: "(1) Tar, garbage was hauled to landfill; (2)
7 wood was burned on site; (3) permits for burn(sic) by Fire Dept., (4)
8 vinyl was removed by me." Signature was "P. F. S. Jr." (R-2 Exhibit)

9 XI

10 Samples for testing were taken off the ground inside the
11 foundation of the building being demolished, and from the burn pile.
12 They were delivered by David Blake to the Department of Ecology on
13 June 5, 1990, for testing.

14 XII

15 Samples of a gold roll vinyl were taken May 10, 1990, from the
16 burn pile in the foundation at the demolition project on the second
17 lot on the west side of North Martin Road and College Way junction.
18 They were tested and reported by Analyst Susan Davis of the Department
19 of Ecology testing laboratory to contain 25-30% chrysotile asbestos.
20 (Exhibit R-3).

21 XIII

22 Samples of backing on particle board and square patterned vinyl
23 obtained from the same site mentioned above were reported by Analyst
24 Susan Davis to contain 30% chrysotile asbestos. (Exhibit R-4).
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2 XIV

3 On June 4, 1990, NWAPA issued P. J. Senatore, Jr., a \$500 fine as
4 penalty for alleged violations of outdoor burning and asbestos removal
5 in a demolition project. Mr. Senatore asserted the burning of
6 prohibited materials was the responsibility of Lloyd Dave Bye who had
7 been asked to do the burning and clean up the property at the
8 demolition site. Mr. Senatore said Mr. Bye did burning at night and
9 also brought materials from another project nearby.

10 XV

11 P. J. Senatore, Jr., has been in the construction business for 25
12 years, but has done little work in demolition, except at the ARCO
13 Refinery in 1970. He is owner of Senatore Enterprises, and has done
14 property development.

15 XVI

16 Any Conclusion of Law deemed to be a Finding of Fact is
17 hereby adopted as such. From these Findings of Fact, the Board makes
18 these

19 CONCLUSIONS OF LAW

20 I

21 The Pollution Control Hearings Board has jurisdiction over the
22 parties and the subject of this appeal. Chapter 70.94 RCW, chapter
23 43.21B RCW.

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2 II

3 NWAPA has been designated as the regional agency to enforce the
4 state laws and regulations as they apply and are incorporated into the
5 regulations of NWAPA. Under RCW 70.94.431, civil penalties cannot
6 exceed \$1,000 per day for each violation. Each such violation shall
7 be a separate and distinct offense.

8 III

9 Under Section 501.2 of NWAPA regulations it states:

10 *It shall be unlawful for any person to cause or allow*
11 *any outdoor fire: . . . 501.22 containing prohibited*
12 *materials, including, but not limited to, rubber*
13 *products, asphaltic products, tires, crankcase oil,*
14 *petroleum wastes, plastics, garbage and dead animals,*
15 *or other like materials.*

16 We conclude that prohibited materials, such as vinyl tile,
17 plastics, tar paper, and asbestos backed roll vinyl, were burned on
18 the site by someone. The owner of the property is responsible for
19 what occurs there, regardless of whether that person was hired or had
20 an arrangement to do the burning on his own. Walt Cox v. OAPCA, PCHB
21 No. 89-57 (1989).

22 IV

23 NWAPA Regulations, Section 570.3, states:

24 *It shall be unlawful to cause or allow the removal or*
25 *encapsulation of asbestos materials unless the owner or*
26 *person conducting an asbestos removal or encapsulation*
27 *operation has filed with the Control Officer written*
notice of intention to remove or encapsulate asbestos.

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2 The Board concludes no written notice was filed for dates of
3 removal of asbestos at this project. NWAPA regulation Section 570.61
4 states in pertinent part:

5 *It shall be unlawful for any person to cause or allow*
6 *any wrecking or dismantling that may break up asbestos*
7 *materials from a facility.*

8 We conclude that this section was violated during demolition.

9 V

10 NWAPA regulations at Section 570.622(c)(1), read in pertinent
11 part:

12 *Asbestos materials that have been removed or stripped*
13 *shall be: (1) adequately wetted to ensure that they*
14 *remain wet until they are collected for disposal.*

15 We conclude that during the process of demolition, over the days
16 the project was conducted, and the times available for disposal, and
17 the weeks of storage of the asbestos-containing waste material, the
18 materials were not kept wet for disposal.

19 VI

20 Because asbestos-containing waste material was scattered on the
21 demolition site, the NWAPA Section 570.823, which requires sealing of
22 all asbestos-containing waste materials in leak-tight containers while
23 wet could hardly have been complied with, as required by regulation.
24 The Board concludes the Section was violated.

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2 VII

3 Fines are not applied as punishment, but are issued to encourage
4 future compliance. As a person involved for 25 years in construction,
5 the appellant has had considerable opportunity to be made aware of the
6 laws and regulations dealing with outdoor burning and building
7 materials. In this instance, he apparently was exposed to
8 considerable amount of information and procedure in the delicate
9 dealing with asbestos-containing material. As owner of the property
10 where the demolition took place over a period of several months, it is
11 not difficult to realize how easy it could become to disregard the
12 sometimes demanding requirements as imposed by federal, state and
13 local regulations. But these have been set in law to protect the
14 health of builders, and the general public. Ignorance of the law is
15 not a valid excuse. Communication between public agencies and
16 citizens can frequently be improved. The Board takes cognizance of
17 this in this case.

18 VIII

19 Appellant has not had any prior violations. Therefore, the
20 penalty should be reduced from \$500 to \$400.

21 IX

22 Any Finding of Fact which is deemed a Conclusion of Law is hereby
23 adopted as such.

24 From these Conclusions of Law, the Board enters the following
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ORDER

The Notice of Violation is affirmed and Order of Civil Penalty affirmed, but abated to \$400 in light of the lack of any prior violations of the asbestos regulations by the appellant.

DONE this 2nd day of February, 1991.

POLLUTION CONTROL HEARINGS BOARD

Harold S. Zimmerman
HAROLD S. ZIMMERMAN, Presiding

Annette S. McGee
ANNETTE S. MCGEE, Member